



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

Dee Freeman
Secretary

CERTIFIED MAIL

December 1, 2010

Mr. William Bunker
Alcoa Power Generating, Inc.
V.P Hydro Operation – Yadkin Division
300 North Hall Road
Alcoa, TN 37701-2516

Re: Yadkin Hydroelectric Project
Stanly County
DWQ # 2007-0812; FERC Project No. 2197

NOTICE OF REVOCATION of 401 Water Quality Certification

Dear Mr. Bunker:

It has come to my attention that information contained in the application and supporting materials submitted to the Division of Water Quality by Alcoa Power Generating, Inc. ("APGI") to obtain 401 Water Quality Certification No. 003173 is incorrect. Specifically, APGI intentionally withheld information material to determining the project's ability to meet the State's water quality standards for dissolved oxygen. This intentional omission is documented, in part, in company e-mails that were entered into evidence at trial over the past few days. The following are some relevant excerpts:

"The draft tube does not work when the unit is operated less than 20MW and the unit operates below that regularly. The state does not know that, but in the future compliance world (and possibly our present world), the expectation will be (is) that if the unit operates, DO enhancement is occurring." E-mail from Gene Ellis to David Parenti on Friday, June 2, 2006 at 9:38 a.m. re: Narrows Draft Tube Valves – DO Enhancement.

"If we even begin to suggest to DWQ that the enhancements proposed by APGI for Narrows and High Rock may not allow those tailwaters to meet state standards, DWQ can't issue us a 401. APGI must stand by its conviction that what it has planned at HR and Narrows will allow those tailwaters to meet standards. If it turns out that those tailwaters do not meet state standards, then it

might be time to talk to DWQ about next steps at that time, and if necessary to seek an amendment to the 401 conditions or schedule.” E-mail from Gene Ellis to Paul Shiers on Wednesday, November 15, 2006 at 11:18 a.m. re: RSA – WQ Section (*Gene responding within Paul’s e-mail text*)

“It is possible, even after all the aeration technology has been installed per the RSA that DO concentrations in the tailwaters may fall below NC DO standards during periods of non-operation. In this case, it is possible that NCDWQ may eventually require APGI to take steps to ensure that DO standards are met at all times.” e-mail from David Parenti to Paul Tran on Wednesday, May 23, 2007 re: FW: DO Memo.

“A good estimate would be about 35-40% of the time one unit is at 40% gate or less.” E-mail from BLEYLVA@aol.com to Gene Ellis on Friday, February 15, 2008 at 4:57 p.m. re: Fwd: FW: Requirements for Narrows Generating Units 2 & 4.

“I just pulled out and studied the RSA language again. Technically, the RSA doesn’t actually say that the aeration must be “on” whenever the unit is operating. And since Unit 4 was completed before the RSA, technically it doesn’t say anything specific about the operation of Unit 4. Soooooo, technically, I think operating Unit 4 below 40% gate without aeration on is OK from a strict compliance perspective. However, I’m certain that NCDWQ would have a problem if they knew. And despite the final wording of the RSA, we know that the intent was that aeration would be “on” whenever the units were operating. Will DWQ ever notice? Possibly. It may be that the result of not having aeration on during these low gate periods will show up in the DO monitoring data (ie, the DOs may drop when flows through project are very low). On the other hand, as I recall, Shirley/PB investigated this low flow business before, and determined that there is a lot of “natural” aspiration through Unit 4 when it is run at a very low gate setting, which resulted in some increase in DO. Will it be enough to “hide” the fact that aeration valves are not on? Who knows.” E-mail from BLEYLVA@aol.com to Gene Ellis on Friday, February 15, 2008 at 5:06 p.m. re: Fwd: FW: Requirements for Narrows Generating Units 2 & 4.

These emails and other information made available to DWQ through the hearing process indicate that issuance of the 401 Certification was based on incomplete or inaccurate information. We have also confirmed that this information was not provided to DWQ during review of your application for a 401 Certification. Because the application and its supporting information were incorrect through intentional withholding of information material to the evaluation of whether the project could meet state water quality standards, I am hereby revoking the 401 Certification pursuant to 15A NCAC 2H.0507(d)(2). You have sixty (60) days to appeal revocation of the 401 Certification by filing a petition in the Office of Administrative Hearings pursuant to G.S. 150B-23. The petition must meet the requirements of Chapter 150B of the North Carolina General Statutes including an appropriate filing fee and be filed with the Office of Administrative

Mr. William Bunker

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Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. You may also decide to surrender your 401 Certification and file a new application to correct the errors in information that you previously submitted.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Coleen H. Sullins', with a long horizontal flourish extending to the right.

Coleen H. Sullins

cc: File
Central Files
Mooreville Regional Office
Tom Reeder, Director, Division of Water Resources
Charles Case, Attorney at Law
Thomas N. Griffin, III, Attorney at Law
Ryke Longest, Attorney at Law
Kathy Cooper, Special Deputy Attorney General
Kimberly Bose, Secretary, Federal Energy Regulatory Commission